

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Casey McCann	Team: Squad #11	CCRB Case #: 201809101	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/24/2018 7:42 PM	Location of Incident: [REDACTED]	Precinct: 23	18 Mo. SOL 4/24/2020	EO SOL 12/9/2020	
Date/Time CV Reported Wed, 10/24/2018 8:24 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/01/2018 11:02 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Oscar Heritier	24283	928471	PSA 5
2. POM Christophe Lembo	01469	930552	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kelvin Gomez	26554	948345	PSA 5
2. POM Edwin Minaya	10575	944813	PSA 5
3. POM Amin Akon	21858	962915	PSA 5
4. POM Andrew Taylor	08163	961355	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Lembo	Abuse: Police Officer Christopher Lembo stopped § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Christophe Lembo	Force: Police Officer Christopher Lembo used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Oscar Heritier	Force: Police Officer Oscar Heritier used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Christophe Lembo	Abuse: Police Officer Christopher Lembo threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Christophe Lembo	Off. Language: Police Officer Christopher Lembo made remarks based on § 87(2)(b) [REDACTED]'s gender identity.	[REDACTED]
F.POM Christophe Lembo	Force: Police Officer Christopher Lembo used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]

Case Summary

On October 24, 2018, § 87(2)(b) filed this complaint with IAB via telephone. The complaint was received at the CCRB on November 1, 2018.

On October 24, 2018, at approximately 7:42 p.m., at § 87(2)(b) in Manhattan, Police Officer Christopher Lembo of Police Service Area 5 (PSA 5) stopped § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**). PO Lembo used physical force against § 87(2)(b) (Allegation B: Force, unsubstantiated). Police Officer Oscar Heritier, also of PSA 5, used physical force against § 87(2)(b) (**Allegation C: Force, § 87(2)(g)**). PO Lembo threatened to arrest § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). PO Lembo pushed § 87(2)(b) against a police vehicle and told her, “I thought you were a guy” (**Allegation E: Force, § 87(2)(g)** and **Allegation F: Offensive Language, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

§ 87(2)(b) was arrested for § 87(2)(b). Video footage was obtained from § 87(2)(b), but it does not capture the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Christopher Lembo stopped § 87(2)(b)

The investigation established the following facts:

On October 24, 2018, at approximately 7:42 p.m., § 87(2)(b) and § 87(2)(b) were waiting for a cab § 87(2)(b) a NYCHA complex, near the rear exit. § 87(2)(b) was wearing a black sweater, jeans, a leather jacket, and a Nike baseball cap. § 87(2)(b) was wearing a sweat suit, leather jacket, du-rag, and Timberland boots.

PO Lembo and PO Heritier approached § 87(2)(b) and § 87(2)(b). PO Lembo asked for both their identifications, and § 87(2)(b) provided both her and § 87(2)(b) s identification. PO Lembo looked at the identifications and determined that neither § 87(2)(b) nor § 87(2)(b) s identification listed § 87(2)(b) § 87(2)(b). PO Lembo asked § 87(2)(b) and § 87(2)(b) to leave, which they did.

Once outside, PO Lembo took § 87(2)(b) to the ground and arrested her, though the events leading up to PO Lembo taking § 87(2)(b) to the ground are in dispute.

§ 87(2)(b) (BR 05) and § 87(2)(b) (BR 06) provided generally consistent testimony. § 87(2)(b) and § 87(2)(b) were waiting by the rear exit, as it was cold, for their cab to arrive to take them to IHOP. PO Lembo walked by § 87(2)(b) and § 87(2)(b) and did not say anything. Immediately after, PO Lembo came back to where § 87(2)(b) and § 87(2)(b) were standing and asked for their identifications. § 87(2)(b) supplied the identifications. PO Lembo briefly looked at the identifications and told § 87(2)(b) and § 87(2)(b) to “get out,” as their addresses did not match the address of the location. § 87(2)(b) and § 87(2)(b) started walking toward the door and PO Lembo followed.

PO Lembo (BR 10) stated that before he took his meal, he conducted a “survey” of the building, which consisted of walking through the back door into the lobby. PO Lembo could not specify what crimes he was looking for, but said, “whatever catches [his] eye or looks suspicious.” As PO Lembo exited § 87(2)(b) § 87(2)(b), he saw § 87(2)(b) and § 87(2)(b) whom he believed to be male at the time, enter the building. PO Lembo went to the basement to

get his food and after returning approximately one minute later, § 87(2)(b) and § 87(2)(b) were in the stairwell by the rear door. § 87(2)(b) was kneeling down and put an object into § 87(2)(b)'s shoe or sock. PO Lembo did not see what the object was or what it looked like, but believed it was narcotics because § 87(2)(b) straightened her body and looked like “a deer in the headlights.” No other factors led to PO Lembo’s belief that the object was narcotics.

PO Lembo walked by without saying anything to § 87(2)(b) or § 87(2)(b) because he was “hoping [his] mere presence” would cause § 87(2)(b) and § 87(2)(b) to leave. After putting his food down near the front of the building, PO Lembo and PO Heritier went to see if § 87(2)(b) and § 87(2)(b) had left the building. As § 87(2)(b) and § 87(2)(b) were still there, PO Lembo asked the women what they were doing in the building. § 87(2)(b) tried to answer, but § 87(2)(b) repeatedly asked PO Lembo, “What’s it to you?” PO Lembo told § 87(2)(b) and § 87(2)(b) that if they did not have a reason to be in the building, they could not hang out there. PO Lembo suspected § 87(2)(b) and § 87(2)(b) of trespassing and therefore they were not free to leave the building at this time. Upon obtaining § 87(2)(b)'s and § 87(2)(b)'s identifications, PO Lembo asked § 87(2)(b) and § 87(2)(b) to leave because their addresses did not match § 87(2)(b)'s, and the women complied. PO Lembo was about to take photographs of the identifications to later prepare UF-250s, when § 87(2)(b) asked for her identification back. PO Lembo said, “You’ll get it once I’m done. You need to step outside.” PO Lembo escorted § 87(2)(b) out of the building by holding onto her arm.

PO Heritier (BR 09) said that he and PO Lembo were inside a vestibule at § 87(2)(b), when PO Lembo walked toward the stairwell. PO Heritier’s view was obstructed and he could no longer see PO Lembo. PO Heritier heard PO Lembo “having some verbal exchange,” so PO Heritier approached the stairwell and saw PO Lembo with § 87(2)(b) and § 87(2)(b). PO Lembo asked § 87(2)(b) and § 87(2)(b) why they were at the location and for their identifications. Upon reviewing the identifications, PO Lembo told the women he was going to “escort them out,” as neither of the addresses on their identifications were § 87(2)(b). The officers, § 87(2)(b) and § 87(2)(b) left the building.

§ 87(2)(g)

Allegation (B) Force: Police Officer Christopher Lembo used physical force against § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) both testified that § 87(2)(b) asked for the identifications back more than once, but PO Lembo repeated, “Get out.” Once outside by a set of five small stairs, § 87(2)(b) asked for her identification back a third time. PO Lembo immediately said, “You know what?” and grabbed § 87(2)(b).

According to § 87(2)(b) (BR 05), PO Lembo grabbed § 87(2)(b) by her leather jacket near the right shoulder area and extended both of his arms and one of his legs, pushing § 87(2)(b) to the ground, causing her to land face-first on the stairs. PO Lembo kept his knees on

§ 87(2)(b) s back, and approximately one minute later, placed her in handcuffs. PO Lembo then sat § 87(2)(b) up. § 87(2)(b) never resisted the arrest or pushed PO Lembo.

§ 87(2)(b) (BR 06) said that when she turned around to ask for her identification, PO Lembo grabbed her right arm below her elbow and placed his leg out to trip § 87(2)(b) § 87(2)(b) landed face down on the ground. PO Lembo then placed his knees in the middle of § 87(2)(b) s back, and, as he tried to handcuff her, pulled her right arm up high behind her back. A few seconds later, PO Lembo handcuffed § 87(2)(b) and sat her up. § 87(2)(b) denied pushing PO Lembo, making any kind of physical contact with PO Lembo, or resisting the arrest.

PO Lembo (BR 10) said that once outside, § 87(2)(b) pulled her arm away from PO Lembo, turned around, and pushed him on his chest with two open hands. § 87(2)(b) was considered under arrest for “assaulting” PO Lembo and trespassing at this point. PO Lembo raised his arms to block § 87(2)(b) s push and grabbed her arms. § 87(2)(b) continued to move her body at this point and PO Lembo took her to the ground, causing him to twist his back and experience substantial pain. § 87(2)(b) landed on her back. PO Lembo then turned § 87(2)(b) over and rear handcuffed her. § 87(2)(b) did not resist while she was on the ground. PO Lembo did not remember lifting § 87(2)(b) s arms up behind her back once she was handcuffed. PO Lembo denied tripping § 87(2)(b) PO Lembo “might have” had his knee on § 87(2)(b) s back when he was handcuffing her, but he was not sure. PO Lembo sustained two herniated discs in his back as a result of taking § 87(2)(b) to the ground, which required surgery in § 87(2)(b).

PO Heritier (BR 09) said that PO Lembo and § 87(2)(b) had another “verbal exchange” outside, but PO Heritier did not recall what was said. PO Heritier then saw PO Lembo and § 87(2)(b) on the ground. § 87(2)(b) was on her back and PO Lembo was on top of her, so that they were face-to-face. PO Heritier did not see how this occurred, as § 87(2)(b) was blocking his view. PO Lembo turned § 87(2)(b) over so that he could handcuff her, but § 87(2)(b) moved her body and tensed her arms to prevent PO Lembo from handcuffing her. Approximately a few seconds later, PO Lembo placed § 87(2)(b) into handcuffs. PO Heritier did not see PO Lembo pull § 87(2)(b) s arms in the air after she was handcuffed.

The details section of § 87(2)(b) s arrest report (BR 07) says, “Defendant did push [PO Lembo] and did flail arms while PO Lembo attempted to arrest defendant.”

The TRI (BR 08) prepared by PO Heritier on PO Lembo’s behalf indicates that § 87(2)(b) pushed/shoved PO Lembo and that PO Lembo suffered a “strained back injury.” The TRI further indicates that PO Lembo used a forcible takedown in defense of his self and to overcome resistance or aggression.

§ 87(2)(g)

Allegation (C) Force: Police Officer Oscar Heritier used physical force against § 87(2)(b)

According to § 87(2)(b) (BR 05), while PO Lembo was handcuffing § 87(2)(b) § 87(2)(b) called 911 and yelled to PO Lembo, “Let her go.” PO Heritier grabbed § 87(2)(b) from behind, holding her left arm with his left hand and right arm with his right hand. PO Heritier grabbed § 87(2)(b) s phone out of her hand. § 87(2)(b) was unable to explain how PO Heritier grabbed her phone while he was holding both her arms. PO Heritier asked PO Lembo if

§ 87(2)(b) was going to be arrested. When PO Lembo said, “No,” PO Heritier let go of § 87(2)(b) and gave her phone back to her.

§ 87(2)(b) (BR 06) did not see PO Heritier grab § 87(2)(b) as she was on the ground at this time and could only see PO Heritier’s feet close to § 87(2)(b)’s feet.

PO Heritier (BR 09) said that during the process of § 87(2)(b)’s arrest, § 87(2)(b) was upset and animated. PO Heritier extended his arm parallel to his body to prevent § 87(2)(b) from approaching the area of § 87(2)(b)’s arrest. PO Heritier had no further physical contact with § 87(2)(b).

PO Lembo (BR 10) said that while trying to place § 87(2)(b) in handcuffs, § 87(2)(b) shoved PO Lembo on his shoulder and PO Heritier then stood between § 87(2)(b) and PO Lembo. PO Lembo did not see PO Heritier use physical force against § 87(2)(b).

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Christopher Lembo threatened to arrest

§ 87(2)(b)

According to § 87(2)(b) (BR 05), after additional officers arrived, PO Lembo picked § 87(2)(b) off the ground and walked her through the rear entrance of the building with the additional officers. § 87(2)(b) tried to follow § 87(2)(b) and the officers, but PO Lembo told § 87(2)(b) that she “could be arrested if [she] came back in the building because [she was] trespassing.”

§ 87(2)(b) (BR 06) said that § 87(2)(b) attempted to follow her and PO Lembo through the building to the front entrance, but PO Lembo told § 87(2)(b) to “stop following.” § 87(2)(b) made no mention of PO Lembo telling § 87(2)(b) she could be arrested.

PO Lembo (BR 10) did not remember if § 87(2)(b) tried to enter the building and did not recall telling her that if she did so, she could be arrested for trespassing. PO Heritier (BR 09) did not remember PO Lembo telling § 87(2)(b) she could be arrested for going back inside the building.

§ 87(2)(g)

Allegation (E) Offensive Language: Police Officer Christopher Lembo made remarks based on § 87(2)(b)’s gender identity.

Allegation (F) Force: Police Officer Christopher Lembo used physical force against § 87(2)(b)

It is disputed among civilian and officer testimony at which point PO Lembo made a comment regarding § 87(2)(b)’s gender identity.

According to § 87(2)(b) (BR 06), after she was handcuffed, she told PO Lembo, “I’m a female. You’re throwing me on the floor.” After PO Lembo sat § 87(2)(b) up, he said, “I thought you were a guy.” § 87(2)(b) said, “I gave you my ID. It says female on it.” After PO

Lembo placed § 87(2)(b) in the police vehicle, he took § 87(2)(b) back out, and pushed her against the vehicle so that her chest made contact with it. § 87(2)(b) did not resist getting out of the vehicle. § 87(2)(b) did not complain of any pain as a result of being pushed against the vehicle. PO Lembo then patted § 87(2)(b)'s pockets and took off her du-rag.

§ 87(2)(b) (BR 05) said that she walked around the building to the front, where PO Lembo placed § 87(2)(b) into a police vehicle in the parking lot. After placing § 87(2)(b) inside the vehicle, PO Lembo immediately took her back out and extending both his arms, pushed § 87(2)(b) against the police vehicle, so that § 87(2)(b)'s chest made contact with the vehicle. § 87(2)(b) said, "My breasts," because she was in pain as a result of being pushed against the vehicle. PO Lembo responded, "I thought you were a dude," and searched § 87(2)(b) before placing her back into the vehicle.

PO Lembo (BR 10) said he originally placed § 87(2)(b) into the vehicle without searching her. Upon remembering, PO Lembo removed § 87(2)(b) from the vehicle. PO Lembo denied pushing § 87(2)(b) against the vehicle and stated there was no trouble removing her from the vehicle. PO Lembo entered § 87(2)(b)'s sweatshirt pocket and found a du-rag and Chapstick. § 87(2)(b) said, "Why are you touching my tits?" PO Lembo responded, "I thought you were a guy and my hands are in your pockets." PO Lembo denied touching § 87(2)(b)'s breasts.

PO Lembo then received a transport back to the command, where he lodged his weapon, before going to the hospital for treatment for his back injury. § 87(2)(b)'s arrest was assigned to PO Heritier.

PO Heritier (BR 10) did not recall PO Lembo saying, "I thought you were a guy," "I thought you were a dude," or otherwise commenting on § 87(2)(b)'s gender identity and expression.

Video footage from the lobby of § 87(2)(b) was obtained from NYCHA, but did not capture any of the allegations. In the footage, however, § 87(2)(b) is seen exiting the elevator wearing gray sweatpants, boots, a gray jacket, and an orange du-rag (BR 11). § 87(2)(b) had a short, close-cut haircut at the time of her interview, which was taken approximately one month after the incident (BR 12).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR 03).
- This is the first complaint to which § 87(2)(b) has been a party (BR 04).
- PO Lembo has been a member of service for 16 years and has been a subject in two CCRB complaints and nine allegations, of which two were substantiated:
 - 201303105 involved a substantiated allegation of discourtesy – word. The Board recommended charges and the NYPD imposed a forfeiture of eight vacation days.
 - 201607362 involved a substantiated allegation of discourtesy – word. The Board recommended command level instructions and the NYPD imposed Command Discipline A.
 - PO Lembo has been a subject of ten force allegations.
- PO Heritier has been a member of service for 17 years and has been a subject in five cases and six allegations, none of which was substantiated. Four allegations of force were made out of the six allegations against PO Heritier.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 6, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (BR 15-16).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no convictions in New York City (BR 01).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no convictions in New York City (BR 02). Her criminal case related to this incident is ongoing and her next court date is § 87(2)(b).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date